

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY WEST, JR.,

Petitioner,

v.

BRIAN CATES,

Respondent.

Case No. 2:21-cv-0410-DJC-JDP (P)

ORDER

Petitioner Jerry West, Jr., a state prisoner proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. On May 17, 2022, I found that petitioner had exhausted two claims, but that the petition described an indeterminate number of other claims that were unexhausted. ECF No. 11 at 1-2. I recommended that petitioner be granted a stay under *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2002), so that petitioner could retain his exhausted claims and return to court to exhaust his other claims. *Id.* Those recommendations were adopted by the district judge. ECF No. 12. Petitioner was directed to file an amended complaint containing only his exhausted claims and, then, to move to amend his petition to include claims newly exhausted in state court. *Id.*

In late 2024, petitioner filed two separate amended petitions and a status report. ECF Nos. 16, 17, & 18. I have reviewed these filings and find that they do not comply with the directions petitioner received. That is, the most recent, operative complaint, ECF No. 18, does not contain

1 only the two claims previously identified as exhausted. Neither does it contain an assertion that
2 other claims have been newly exhausted in state court and are ready to be taken up in this court.
3 Additionally, the complaint is not on the district's habeas petition form, making it difficult to
4 understand precisely how many claims are at issue. Finally, the "status report" filed by petitioner
5 sheds little clarity on the status of petitioner's claims in state court. Indeed, it appears to show
6 confusion on petitioner's part as to what needs to be done. ECF No. 17 at 1-3.

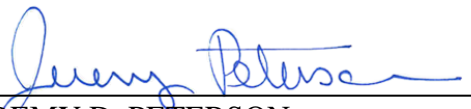
7 Accordingly, I will direct petitioner to file a new amended petition on the district's habeas
8 form. That petition should contain only exhausted claims. Separately, petitioner should submit a
9 short status report describing the status of any claims that are pending in but not yet exhausted in
10 state court.

11 Accordingly, it is ORDERED that:

- 12 1. Petitioner's second amended petition, ECF No. 18, is DISMISSED with leave to
13 amend.
- 14 2. The Clerk of Court shall send petitioner a habeas petition form with this order.
- 15 3. Within thirty days of this order, petitioner shall submit an amended petition
16 containing only fully exhausted claims. This petition should be titled "Third Amended Petition."
- 17 4. Within thirty days of this order, petitioner shall also file a status report indicating
18 the status of any claims he is still exhausting in state court.

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20 IT IS SO ORDERED.

21 Dated: March 21, 2025

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23 JEREMY D. PETERSON
24 UNITED STATES MAGISTRATE JUDGE
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